

**DECLARATION  
OF  
ROBERT D. WILLIG  
AND  
JONATHAN M. ORSZAG**

**July 12, 2007**

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## **I. Qualifications**

### **A. Robert Willig**

1. Robert Willig is Professor of Economics and Public Affairs at the Woodrow Wilson School and the Economics Department of Princeton University, a position he has held since 1978. Before that, he was Supervisor in the Economics Research Department of Bell Laboratories. His teaching and research have specialized in the fields of industrial organization, government-business relations, and welfare theory.

2. Dr. Willig served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the Department of Justice (“DOJ”) during the Administration of President George H.W. Bush (1989 to 1991). He also served on the Defense Science Board task force on the antitrust aspects of defense industry consolidation and on the Governor of New Jersey’s task force on the market pricing of electricity. He is the author of numerous articles, author and editor of several books, and the co-editor of *The Handbook of Industrial Organization*.

3. He has been active in both theoretical and applied analysis of issues affecting the telecommunications industry, including the wireless sector. Since leaving Bell Laboratories, Dr. Willig has been a consultant to a number of major telecommunications and wireless providers. He has testified before the U.S. Congress, the Federal Communications Commission, and the public utility commissions of about a dozen states regarding telecommunications issues. He has also been on government and privately supported missions involving telecommunications throughout South America, Canada, Europe, and Asia. On other matters, he has worked as a consultant with the Federal Trade Commission, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank, and various private clients. Dr. Willig also serves as a Senior Consultant to Competition Policy Associates,

(“COMPASS”) an economic consulting firm.

B. Jonathan Orszag

4. Jonathan Orszag is a Senior Managing Director and co-founder of COMPASS. Mr. Orszag’s services have been retained by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. These engagements have involved a wide array of matters, from entertainment and telecommunications issues to issues affecting the sports and retail industries. He has testified before administrative agencies, the U.S. Congress, the European Court of First Instance, and other foreign regulatory bodies on a range of issues, including competition policy, industry structure, and fiscal policy.

5. Previously, Mr. Orszag served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning, as an Economic Policy Advisor on the President’s National Economic Council, and an economic aide to the Secretary of Labor. For his work at the White House, Mr. Orszag was presented the Corporation for Enterprise Development’s 1999 leadership award for “forging innovative public policies to expand economic opportunity in America.”

6. Mr. Orszag is a Fellow at the University of Southern California’s Center for Communication Law & Policy. Mr. Orszag received a M.Sc. from Oxford University, which he attended as a Marshall Scholar. He graduated *summa cum laude* in economics from Princeton University, was elected to Phi Beta Kappa, and was named a *USA Today* Academic All-American.

## **II. Introduction**

7. We have been asked by counsel for AT&T Inc. (“AT&T”) and Dobson Communications Corporation (“Dobson”) to assess the potential competitive effects of the proposed merger between AT&T and Dobson. In particular, we have been asked to focus our analysis on (i) the potential consumer benefits that would result from the proposed merger, (ii) the competitive effects of the proposed merger on a national basis, and (iii) the post-deal competitive effects in the particular Cellular Market Areas (“CMAs”) where, at present, AT&T and Dobson both offer facilities-based service.

8. We do not address here the specific competitive issues in each CMA, because those issues are addressed in the submission by the parties. Our declaration provides a general analysis of the competitive pressures influencing pricing decisions and assesses the likelihood of competitive harms that might result from unilateral behavior or coordinated effects. While we do not have complete data regarding the state of competition in each CMA possibly affected by this transaction, we have reviewed data regarding the number of competitors and the merging firms’ spectrum, subscribers and network presence. Our analysis of the available evidence shows that the proposed merger between AT&T and Dobson is unlikely to harm competition or the public interest on a national basis or in any CMA through unilateral effects or coordinated interactions.

9. We conclude that the proposed merger of AT&T and Dobson would not alter significantly the existing competitive forces driving AT&T’s pricing decisions or other pertinent business undertakings in any geographic area. As shown below, there is no basis for concluding that the transaction would adversely impact competition. A majority of the CMAs in which AT&T and Dobson both offer facilities-based wireless service would still contain at least five

facilities-based competitors post-merger, and all but one of the remaining CMAs would still have four facilities-based competitors.<sup>1</sup> Thus, from the standpoint of structure at the CMA level, and in light of the competitive forces constraining AT&T's post-merger behavior, there is no reason to expect that the merger will lead to either unilateral or coordinated anticompetitive effects.

10. The remainder of this declaration is organized as follows. Section III discusses the specific efficiency benefits engendered by the proposed AT&T-Dobson combination. Section IV assesses the likelihood of unilateral and coordinated competitive effects as a result of the proposed merger. Finally, Section V draws conclusions based on the analyses in Sections III and IV.

### **III. Merger-Specific Efficiencies**

11. AT&T and Dobson are pursuing the proposed transaction in order to achieve a number of significant efficiencies that will result in cost savings and quality improvements for consumers. Moreover, for Dobson's existing customers (many of whom reside in rural areas), specifically those customers either in areas where AT&T does not currently operate or who are subject to a term of service commitment under their current contracts with Dobson, the merger will result in a wider variety of advanced services than they would likely receive in the absence of this transaction. These efficiencies are merger-specific; that is, they likely could not be achieved at all, nor certainly achieved as rapidly, absent the proposed merger.

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<sup>1</sup> In CMA 597 (Oklahoma 2), there would be three wireless competitors post-merger: the combined AT&T-Dobson, Sprint, and Pioneer. A number of other wireless carriers own spectrum in the CMA, including T-Mobile, US Cellular, and Verizon.

12. In this section, we discuss four specific efficiencies that AT&T and Dobson expect to achieve from the merger and explain why these efficiencies likely will result in direct and significant benefits to consumers. The four efficiencies are: (a) reduced costs from the elimination of inter-company roaming fees; (b) greater variety of handsets at lower cost; (c) other cost savings and benefits; and (d) improved customer experience.

A. Reduced Costs from Elimination of Inter-Company Roaming Fees

13. Consummation of the proposed deal will reduce both Dobson's and AT&T's reliance on roaming, thereby generating savings in the marginal costs that each experiences, and concomitant elimination of any double marginalization. Each party is the other's largest roaming partner. In 2006, Dobson's total roaming revenues were \$283 million and AT&T accounted for 84 percent of the roaming minutes on Dobson's network.<sup>2</sup> Since the roaming fees paid by the carriers are significantly greater than their costs of providing in-network service, the transaction should save the merged-entity well in excess of \$1 billion of experienced marginal costs over the next five years, based on 2006 roaming rates. The elimination of the inter-company payments associated with this roaming traffic will reduce the combined company's marginal cost of providing both regional and national service to consumers. Economic theory shows that marginal cost savings will accrue to the benefit of consumers in the form of lower prices, higher service quality, or both. Importantly, the elimination of roaming payments and the resulting reduction in marginal costs cannot be achieved in the absence of the merger in certain CMAs and could only be achieved in other CMAs with additional capital investments in facilities.

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<sup>2</sup> Dobson Commc'ns Corp., Annual Report (Form 10-K) at 5 (Feb. 28, 2007) ("Dobson 10-K").

## B. Greater Variety of Handsets at Lower Cost

14. The proposed transaction will also result in cost savings because of AT&T's greater economies of scale. Due to its larger subscriber base, AT&T enjoys a significant cost advantage, relative to Dobson, in handset acquisition. The proposed transaction will therefore result in a lower per subscriber cost of serving Dobson's customers, which is another reduction in marginal cost and another benefit to Dobson's subscriber base.

15. AT&T also provides its customers with a greater range and variety of handsets than Dobson can on its own. AT&T was the first carrier to offer new and innovative handsets such as the Apple iPhone and the Motorola RAZR, among others. The transaction thus will enable Dobson subscribers, where AT&T does not offer service or who would incur financial penalties to terminate prematurely their service agreements, to receive newer and more innovative handsets than would be available to them absent the merger. The most prominent immediate example is the iPhone, but there are numerous other phones and features that AT&T, but not Dobson, offers (and has offered) to subscribers. Carriers such as Dobson, whose business focuses on suburban and rural markets, typically are unable to receive newly introduced handsets for some time after they are made available to larger national carriers.<sup>3</sup>

## C. Other Cost Savings and Benefits

16. In addition to lower roaming fees and reduced handset acquisition costs, AT&T

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<sup>3</sup> This is due, in part, to the fact that the large national carriers such as AT&T enjoy closer relationships with device manufacturers than do rural and suburban carriers and are therefore better able to devote substantial technological resources to software development and collaboration with manufacturers on handset design.



and Dobson also have identified merger-specific efficiencies in their information technology and administrative systems. For example, it is anticipated that the merger will reduce the cost of handling billing for Dobson subscribers as they are migrated into AT&T's billing system. Folding Dobson's customer base into AT&T's existing system will therefore result in significant marginal cost savings post-transaction.<sup>4</sup>

17. Another important benefit to Dobson's customers (and, to a lesser extent, to AT&T customers), would arise directly from the increase in the size of each carrier's customer base. Both AT&T and Dobson currently offer plans featuring unlimited, or nearly so, free "mobile to mobile" in-network calling minutes. Dobson's customers, however, can avail themselves of this opportunity only when calling the fewer than 1.7 million subscribers to Dobson's service. AT&T, in contrast, has roughly 62 million subscribers. The proposed transaction thus will increase to approximately 64 million the number of customers to whom current AT&T and Dobson subscribers would be able to make such unlimited mobile-to-mobile calls.<sup>5</sup>

18. In areas where AT&T is the ILEC but currently does not offer wireless service, the proposed transaction will further benefit Dobson's customers by providing them with an opportunity to combine their wireline and wireless service providers.<sup>6</sup> Among the consumer

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<sup>4</sup> The parties have identified other sources of cost savings as well, such as reduced customer acquisition costs; consolidation of redundant cell sites and network operating expenses; and reductions in general and administrative expenses.

<sup>5</sup> See Declaration of Rick L. Moore, Senior Vice President of Corporate Development, AT&T Inc. (Jul. 13, 2007) ¶ 9 ("Moore Decl.").

<sup>6</sup> For example, AT&T offers wireline service in parts of Michigan, Oklahoma, Texas, and Wisconsin in which Dobson offers wireless service today, but AT&T does not.

benefits of this “bundled service” are receipt of a single bill, as well as eligibility for discounts available when subscribing to multiple services. Dobson’s existing customers could also sign up for one of AT&T’s Unity Plans, which allow unlimited calls to and from each of the more than 100 million wireline and wireless phone numbers of AT&T customers.

#### D. Improved Customer Experience

19. The proposed merger is likely to improve the wireless customer experience, in ways additional to the implications of the efficiencies that would lower the merging parties’ marginal costs. Integration of the companies’ networks will permit greater cell site density in areas where the companies’ spectrum overlap and their overlapping tower facilities are complementary. The merger also will permit the combined company to use more efficiently the current companies’ complementary spectrum and networks. Greater cell site density will enable faster data speeds and better penetration of homes and buildings. In addition, in areas where AT&T does not currently provide coverage and Dobson has 850 MHz spectrum, the proposed merger will enable AT&T to avoid the costs of constructing network facilities that might otherwise be necessary. In areas where AT&T provides 1900 MHz service, the integrated network will be able to make use of Dobson’s 850 MHz spectrum. Greater reliance on 850 MHz spectrum, coupled with increased cell site density, also will enhance the customer calling experience by reducing, for example, the incidence of dropped calls, dead spots, and coverage gaps in certain areas. While AT&T and Dobson currently have roaming agreements and might attempt to expand their coverage through additional roaming agreements, such arrangements offer fewer benefits to customers than can be achieved through a complete integration of the two firms’ wireless infrastructures.

20. The proposed transaction will make available to Dobson’s customers in areas not

currently served by AT&T an array of services, features, and rate plan options that Dobson either does not or cannot provide because it lacks the overall subscriber base and/or the access to capital, including: mobile video and feature-rich music services,<sup>7</sup> a wider selection of handheld devices,<sup>8</sup> push-to-talk-service,<sup>9</sup> and more international roaming.<sup>10</sup> These services are popular with customers. As a general matter, Dobson's business executives note that Dobson is not an early adopter of advanced services due to its limited resources and business strategy. Dobson generally waits for the larger carriers to roll out new features and then, after the features have been market tested, decides which ones to implement. As a result, even to the extent that Dobson might eventually have offered some of the advanced features described above, Dobson's existing customers will benefit from the proposed transaction by gaining more timely access to the most recent advanced services.

#### E. Conclusion

21. The four categories of efficiencies described above, and the consumer benefits that flow therefrom, are not mere speculation. Acquisitions recently consummated by AT&T

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<sup>7</sup> See Moore Decl. ¶ 11.

<sup>8</sup> For example, the iPhone as well as Wi-Fi and GPS functionalities included in certain handsets are now available to AT&T subscribers. *Id.*

<sup>9</sup> AT&T's push-to-talk service works across the entire AT&T network. *Id.* ¶ 17. Dobson currently offers push-to-talk service in Alaska, but does not have any plans to offer it in the continental U.S.

<sup>10</sup> AT&T has over 400 international roaming agreements covering more than 190 countries. Moore Decl. ¶ 16. By contrast, Dobson offers its customers international roaming capability in only a handful of countries. See Declaration of Thomas A. Coates, Vice President, Corporate Development, Dobson Commc'ns Corp. (July 11, 2007) ¶ 9. Therefore, the transaction will offer Dobson's customers much greater international roaming capabilities than they otherwise have.

strongly corroborate our conclusions regarding the efficiencies to be realized from the combination of AT&T's and Dobson's networks, operations, and workforces.

#### **IV. Competition Analysis of Proposed AT&T-Dobson Merger**

##### **A. Overview**

22. For several reasons, the proposed transaction is unlikely to harm competition in any particular CMA. First, as discussed below, even if competition were analyzed at the CMA level, it would be seen that sufficient rivalry will remain in every CMA so that anticompetitive effects are unlikely. Moreover, the competitive forces that characterize the wireless communications industry make such localized anticompetitive effects unlikely.

23. Before considering competition at the local level, it is important to note that AT&T generally sets its prices for wireless service on a nationwide basis. AT&T's current rate plans in the continental U.S. are national in scope and their pricing is determined almost entirely on a national basis. We understand from interviews with AT&T executives that uniform pricing results in significant efficiencies by allowing AT&T to employ common platforms and information across its entire system of call centers. Uniform pricing also allows more effective sales training on common products and services, particularly when working with national retailers such as Wal-Mart, RadioShack, and Best Buy. The very fact that AT&T today sets its service prices on a nationwide basis suggests that the added costs of setting prices on a local

basis exceed the incremental benefits such narrow geographical pricing might deliver.<sup>11</sup>

24. For a local deviation from the national rate plan to be implemented, AT&T undergoes a lengthy process of review in advance of its approval. These price-cutting “promotions” are typically short-term in nature; once implemented, they are evaluated after 90 days and typically persist for less than six months.<sup>12</sup> Such local pricing variations are not implemented in areas as small as a CMA, and are typically offered to customers throughout an entire state or region. Moreover, according to AT&T executives, these promotions have occurred only roughly half a dozen times a year in recent years and have occurred only twice in the first six months of 2007. The relative infrequency, limited durability, and broad geographic coverage of AT&T’s promotions suggest that they are not a significant departure from national pricing. Moreover, these characteristics indicate that *de minimis* changes to AT&T’s national subscriber or spectrum shares, such as would arise through the proposed deal, are unlikely to have an impact on AT&T’s pricing.<sup>13</sup>

25. When competition is analyzed at a national level, it is clear that the proposed merger of Dobson and AT&T would not harm competition. Dobson represents only a small share of wireless customers nationwide – less than one percent. Thus, the combined entity will only have a marginally larger share of wireless customers nationally than does AT&T alone today. The combined entity will continue to face significant competitive discipline both from

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<sup>11</sup> Given that Dobson increases the AT&T subscriber base by such a small amount, it is unlikely that the proposed transaction would affect AT&T’s incentives to continue to set its service prices on a nationwide basis.

<sup>12</sup> In the past year, most of these promotions lasted less than three months.

<sup>13</sup> AT&T does provide its local managers with some flexibility in pricing its handsets, but handsets represent a small share of the overall cost of wireless service.

other major national facilities-based cellular carriers and Mobile Virtual Network Operators (“MVNOs”). Moreover, increasingly, the merged entity likely will face competitive pressure from service providers employing non-cellular technologies such as wireless Voice over Internet Protocol (“VoIP”).

26. Nonetheless, even if we assume, for the sake of argument, that competition is more localized and confined to individual CMAs, there are only 38 “overlap” CMAs in which both AT&T and Dobson operate facilities-based wireless networks and offer services to the public.<sup>14</sup> In each of these CMAs, a proper assessment must account for each of the following ten factors, each of which may attenuate any potential anticompetitive effects of the proposed merger.<sup>15</sup> The presence of any one of the pertinent factors in a given CMA may constrain the combined entity’s ability to raise prices or diminish quality. In the overlap CMAs, several of these factors typically operate in combination to eliminate or mitigate substantially any competitive concerns.

#### B. Unilateral Effects Analysis

27. There are at least ten factors that, where present, limit the combined entity’s ability to raise prices or to lower quality in any given CMA. We consider each of these ten factors below.<sup>16</sup>

28. The first factor that must be considered for each CMA is the number of facilities-

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<sup>14</sup> See Description of Transaction, Public Interest Showing and Related Demonstrations, Appendix B: CMAs Where AT&T and Dobson Compete (“Overlap CMA Data”).

<sup>15</sup> It is important to emphasize that many of these factors are driven by competition at the *national* level, rather than by CMA-level competition.

<sup>16</sup> These factors are not presented in order of importance.

based competitors. In 24 of the 38 overlap CMAs, there will still be five or more facilities-based competitors post-merger; as noted above, in all but one of other overlap CMAs, four facilities-based competitors will remain.<sup>17</sup> Sprint, T-Mobile, and Verizon are facilities based-competitors in 25 of the 38 overlap CMAs, and at least two of them are facilities-based competitors in 10 of the remaining 13 CMAs.<sup>18</sup> At least one of the two next largest carriers, Alltel and US Cellular, offers service in nine of these 13 CMAs; both Alltel and US Cellular offer national rate plans.<sup>19</sup> Although some carriers are closer substitutes for each other than others, the FCC has recognized a high degree of substitutability among the services of all wireless providers.<sup>20</sup> Thus, given the number of carriers that would remain in each CMA post-merger, any attempt by the combined entity to elevate price, suppress output, or degrade service quality would be unprofitable (because customers could easily switch to another carrier), and therefore any such measure would be transitory or, far more likely, never attempted in the first place.

29. The second factor, which is closely related to the first, is the combined AT&T-Dobson subscriber share in the given CMA. When the combined share is small, the incentives of the merged entity to raise prices are decidedly weak due to the presence of other carriers with sufficient incentive and ability to discipline any potential price elevation by the combined

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<sup>17</sup> See Overlap CMA Data.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *In re Applications of AT&T Wireless Servs., Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21575 ¶ 132 (2004) (“*Cingular/AT&T Wireless Order*”).

firms.<sup>21</sup> If the combined entity does not have a significant share of subscribers, the inquiry should end with regard to that particular CMA. While we do not have data that would permit us to calculate the subscriber shares for all firms in each CMA, it is clear from the number of AT&T and Dobson subscribers in some areas that the total combined share in those areas post-merger would be too small to engender any possible competitive concern.

30. The third factor to consider is that the wireless industry is dynamic – churn levels are relatively high and historical trends reveal significant shifts in market share. As a result, market share calculations based upon new subscribers and churners, *i.e.*, recent market share trends, may indicate a greater level of competition than does a static snapshot of market shares. As explained in the Horizontal Merger Guidelines: “Market concentration and market share data of necessity are based on historical evidence. However, recent or ongoing changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance.”<sup>22</sup> The ability of a wireless carrier, even one with a relatively modest market position today, to achieve rapid growth trajectories suggests that the markets are more competitive than may be indicated by a singular focus on extant market shares. The FCC itself has recognized this fact in many of its market power analyses.<sup>23</sup>

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<sup>21</sup> See, generally, Dep't of Justice & Fed. Trade Comm'n, Commentary on the Horizontal Merger Guidelines (Mar. 2006), § 2, available at <http://www.usdoj.gov/atr/public/guidelines/215247.pdf>.

<sup>22</sup> Dep't. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines, § 1.521 (1992, amended 1997), available at <http://www.ftc.gov/bc/docs/horizmer.htm> (“Horizontal Merger Guidelines”).

<sup>23</sup> See, e.g., *In re Motion for AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd. 3271, 3303-05 ¶¶ 59-62 (1995); *In re Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd. 5880, 5890 ¶ 51 (1991).



31. The fourth factor is the degree of competition between AT&T and Dobson in the CMA. We do not at present have the data necessary to quantify the extent to which subscribers view AT&T and Dobson as substitutes (for example, by measuring diversion ratios). However, AT&T's business executives have indicated that they do not view Dobson as offering a mix of features, services, and plans that closely matches AT&T offerings, and thus do not believe that consumers view them as substitutes as close as national carriers' services are to one another. These executives have indicated that, as a result, competition from Dobson does not factor into AT&T's decisions about pricing, promotions, or improvements in service quality. AT&T executives view other national carriers – such as Verizon, Sprint/Nextel, and T-Mobile – as having offerings that are more similar to those of AT&T. A merger between two firms whose products or services are less closely substitutable than are those of other rivals, which is apparently the case for AT&T and Dobson, is less likely to result in increased market power for the combined entity. Put differently, the proposed merger does not appear to eliminate a significant constraint on AT&T's pricing and other market conduct.

32. The fifth factor is the ability of existing facilities-based competitors to expand their service offerings within the CMA. The ability of rivals to respond to a price increase by the merged entity depends critically on whether the rivals have the excess spectrum to expand without incurring any unusually large incremental costs and without necessitating any reduction in the quality of service. The FCC has previously noted that the availability of spectrum to rival carriers is a key factor in its competitive effects evaluation.<sup>24</sup> Specifically, the Commission has noted that “where a firm is already present in a market, has comparable service coverage, and has

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<sup>24</sup> See *Cingular/AT&T Wireless Order* ¶¶ 134-137.

excess capacity relative to its current subscriber base, it should be able to adjust rates, plan features, handsets, advertising, etc., in the short run.”<sup>25</sup>

33. In many of the CMAs where AT&T and Dobson overlap, existing facilities-based competitors have substantial amounts of excess spectrum capacity. For example, in CMA 594 (Ohio 10 - Perry), every national competitor has a significant amount of spectrum: Sprint has 68.7 MHz, Verizon has 43.2 MHz, and T-Mobile has 40 MHz.<sup>26, 27, 28</sup> In CMA 617 (Pennsylvania 6 - Lawrence), Sprint has 78.1 MHz, Verizon has 60.3 MHz, and T-Mobile has 38.9 MHz.<sup>29</sup> In CMAs where existing facilities-based competitors have large spectrum holdings, it is unlikely that the combined entity will have the incentive or ability to raise prices or diminish quality post-merger.

34. The sixth factor is the possibility of entry into a particular CMA by licensed wireless carriers that are not already providing facilities-based services in that CMA. Licensed wireless providers serving adjacent CMAs have a proven infrastructure to serve nearby customers. They could, in a timely manner, extend that infrastructure to serve an adjacent CMA, in response to a hypothetical price increase by the post-merger AT&T-Dobson. The relatively

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<sup>25</sup> *Id.* ¶ 134.

<sup>26</sup> All spectrum holdings reported in this declaration are based on the cellular, PCS, SMR and AWS licensees in the Commission’s Universal Licensing System. Licensees were attributed to carriers based on their Form 602 ownership reports. We calculate spectrum-holdings for a CMA by taking a weighted average of county-level spectrum holdings using the county populations as weights.

<sup>27</sup> Sprint’s spectrum includes 1.9 GHz spectrum reallocated to it as part of its relinquishing some of Nextel’s SMR spectrum.

<sup>28</sup> In addition, Alltel, AWS Wireless, ComScape, Leap and NTELOS each have at least 10 MHz in this CMA.

<sup>29</sup> Leap has 16.4 MHz of spectrum in this CMA.

low barriers to such facilities-based entry, especially by licensed carriers and carriers operating in adjacent areas, translate into an important competitive constraint on the merged firm. As noted above, Verizon, T-Mobile, and Sprint offer facilities-based competition in 25 of the 38 overlap CMAs. In five of the 10 CMAs in which two of these carriers are facilities-based competitors, the third carrier has at least 20 MHz of spectrum.<sup>30</sup> In each of the three CMAs in which only one of these carriers is a facilities-based competitor, the other two carriers together have at least 58 MHz of spectrum.

35. Given the presence of potential entrants into CMAs served by AT&T and Dobson, there is strong reason to believe that any post-merger attempt by AT&T/Dobson to raise prices significantly in those CMAs would induce entry by other wireless carriers not currently offering facilities-based service in those areas. Such potential entry by one or more competitors is likely sufficient to discipline any attempted price increase by the combined entity post-merger.

36. The seventh factor that may constrain the pricing of AT&T-Dobson post-merger is that the merged firm will face competition from MVNOs and other resellers. As a result of their national advertising and consumer recognition, these sellers often provide significant competition at a local level despite their lack of ownership of local facilities. The number of subscribers receiving wireless services from an MVNO or reseller has increased dramatically in recent years and, as of 2005, totaled roughly 13.4 million subscribers.<sup>31</sup> The MVNOs and

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<sup>30</sup> See Overlap CMA Data. In the other five CMAs, the third carrier has at least 10 MHz of wireless spectrum.

<sup>31</sup> See *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs.*, Eleventh Report, 21 FCC Rcd. 10947, 10959-60 ¶¶ 27-28 (“*Eleventh CMRS Competition Report*”).

resellers include companies such as Virgin Mobile,<sup>32</sup> Qwest,<sup>33</sup> and Helio,<sup>34</sup> which offer a variety of differentiated services. In addition, cable television companies have recently entered the wireless sector, seeking to bundle cellular service with their existing “triple play” of television, high-speed data, and telephone services.<sup>35</sup> Time Warner, Cox, and Comcast already are offering wireless service in selected areas, and Advance/Newhouse reportedly will soon launch its cellular service.<sup>36</sup> In analyzing the potential competitive effects of the proposed transaction, the competitive constraints of such non-facilities-based providers must be considered.

37. The eighth factor is the ability of competitors in neighboring CMAs to serve subscribers through roaming arrangements. In many cases, carriers serving adjacent CMAs could exert competitive pressure on the combined AT&T-Dobson even without entering the CMA in which a price increase by AT&T-Dobson is hypothesized. Consumers need not limit

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<sup>32</sup> See *Eleventh CMRS Competition Report* ¶¶ 27-28. Virgin Mobile offers prepaid and pay-as-you-go services targeted primarily at the youth market. See Virgin Mobile, Investor Relations, <http://investorrelations.virginmobileusa.com/>.

<sup>33</sup> Qwest bundles its wireline voice and high-speed Internet services with resold wireless services. See Qwest Wireless, Products and Services, <http://www.qwest.com/residential/wireless/bundleslanding/>.

<sup>34</sup> Helio is a joint venture between Internet service provider Earthlink and SK Telecom of Korea that offers exclusive handheld devices to multimedia users. See Helio, Get the Facts, [http://www.helio.com/page?p=about\\_faq](http://www.helio.com/page?p=about_faq).

<sup>35</sup> Four of the largest cable MSOs – Comcast, Time Warner Cable, Advance/Newhouse, and Cox Communications – formed a joint venture with Sprint to acquire wireless spectrum and provide wireless service.

<sup>36</sup> See Time Warner Cable, Products & Services, Introducing Pivot, <http://www.timewarnercable.com/SanAntonio/Products/wireless/Pivot/default.html>; Comcast Communications, Pivot, <http://www.comcast.com/corporate/wireless/default.html>; Cox Communications, Pivot, <http://www.cox.com/pivot/>; Todd Spangler, *Operators Going Slow on Pivot Wireless*, Multichannel News, Jun. 20, 2007, available at <http://www.multichannel.com/article/CA6453879.html>.

their wireless service options to providers selling facilities-based service in the areas in which they live. If the combined firm were to attempt to raise prices in a particular geographic area, customers could easily acquire services from adjacent areas, especially if these are geographic regions to which they ordinarily travel for work. Thus, even if the wireless providers do not have facilities-based services in a particular area, their customers can still obtain service through roaming agreements.

38. In the case of AT&T and Dobson, the competitive constraint provided by carriers serving adjacent CMAs, particularly in areas where customers might work, is significant. For example, 44 percent of workers who live in CMA 712 (Wisconsin 5 – Pierce) commute to another CMA. Similarly, 41 percent of the working population that resides in CMA 469 (Maryland 3 – Frederick) work outside of this CMA.<sup>37</sup>

39. The ninth factor is the role of spillovers from advertising by carriers in adjacent areas. Consumers receive advertising – including pricing information – through direct mail and via the Internet. Many rural and suburban areas also receive TV and radio programming broadcast from larger population centers, as well as newspapers published in urban areas. These media outlets provide extensive information about wireless pricing and service options. Similarly, nationwide carriers generally conduct nationwide advertising that results in dissemination of their brand and rate plan information in areas where they do not actually provide service. As a result, customers are well aware of competitive options available in adjacent (or national) areas, which can constrain to some degree any ability of the combined

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<sup>37</sup> U.S. Census Bureau, Journey to Work and Place of Work, Census 2000 Data, *available at* <http://www.census.gov/population/www/socdemo/journey.html>.

AT&T-Dobson to raise prices or reduce service quality in any particular CMA.

40. The tenth factor is the inability to target price increases. In light of the characteristics of the wireless industry and the absence of rigid geographic boundaries to markets, it is also likely that the post-merger firm would not be able to identify customers in more concentrated areas with sufficient precision to make differential pricing across markets profitable. In particular, it would be necessary for the post-merger firm to be wrong only in a relatively small number of cases to render it unprofitable to charge higher prices to customers in a few areas with fewer competitors.<sup>38</sup>

41. Let us suppose that, post-merger, AT&T-Dobson attempted to charge five percent more to consumers in what it thought was a less competitive area. If it cannot precisely identify these areas (because, for example, consumers could shop in an adjacent CMA or purchase a cell phone over the Internet and use their work address rather than their home address for billing), some percentage of the people targeted for this price increase in the “less competitive” area would, in fact, have another competitive wireless provider as an option – and a segment of these customers would be inclined to switch to the alternative provider in response to the price increase by AT&T-Dobson.<sup>39</sup> The inability of AT&T to target precisely any attempt to

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<sup>38</sup> See, e.g., Jerry A. Hausman, Gregory L. Leonard & Christopher A. Velluro, *Market Definition Under Price Discrimination*, 64 ANTITRUST L. J. 367, (1996).

<sup>39</sup> To analyze the profitability of the price increase, AT&T would compare its profit before and after the price increase. The profit earned before the price increase would be equal to  $(P - C)N$ , where  $P$  is the price,  $C$  is the marginal cost of producing the service, and  $N$  is the number of consumers in the targeted area. The profit after the price increase would be  $(1.05P - C)XN$ , where  $X$  is the percentage of customers who do not switch to the competitive option (so that  $1-X$  is the percentage of targeted customers who do switch to the competitive wireless provider). The breakeven value for  $X$  is equal to:

(footnote continued ...)

implement a price discrimination strategy, and the concomitant costs of using a “blunt instrument,” together constitute yet another reason why the proposed merger is unlikely to result in an anticompetitive increase in prices or a diminution of service quality.

C. Coordinated Effects Analysis

42. Many of the same factors discussed above also make it unlikely that coordinated effects would occur in any subset of the CMAs in which AT&T and Dobson operate. The evidence clearly indicates that the industry is not conducive to tacit coordination now, and will not be so after the transaction. For example, the FCC has found that the wireless sector is subject to “intense competitive pressure, rather than coordinated interaction.”<sup>40</sup> Because of this competitive pressure, the FCC has stated that carriers “use information obtained about their rivals to improve their own ability to compete in attracting and retaining customers,” rather than coordinate their actions.<sup>41</sup>

43. In order for there to be any valid concerns that the proposed merger of AT&T and  
(... footnote continued)

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$$\frac{\frac{P}{C} - 1}{1.05 \frac{P}{C} - 1}$$

That is, the percentage of people who do not switch needs to be greater than this ratio for the price discrimination attempt to be profitable. For example, if the ratio of price to marginal cost were about 1.67, only 11 percent of the subscribers targeted with the price increase would have to switch away from AT&T-Dobson in order for it to be unprofitable to attempt to price discriminate against customers in rural areas. If this ratio were 2, only nine percent of the subscribers targeted with the price increase would have to switch away to defeat a price increase, and if the ratio were 1.5, only 13 percent of customers would need to switch away.

<sup>40</sup> *Cingular/AT&T Wireless Order* ¶ 155.

<sup>41</sup> *Id.* ¶ 154.

Dobson would give rise to coordinated interactions, it must be shown that the proposed merger would make coordination profitable to the firms involved and that post merger there would be an “ability to detect and punish deviations that would undermine the coordinated interaction.”<sup>42</sup>

44. The available evidence suggests that the competitors in each CMA at issue will still compete vigorously on a variety of dimensions including price, network coverage, handset promotions, plan features, service quality, customer service, and the introduction of new services. Therefore, the proposed transaction would not change the competitive dynamics enough to make coordination profitable for the firms involved. Moreover, competition along a variety of different dimensions – from promotions on handsets to service quality – makes it more difficult for rival firms to reach terms of coordination. There is no evidence available to us suggesting that the proposed transaction would alter this fact.

45. Competitors that possess excess capacity could readily increase their provision of wireless services if demand were to present itself (as would happen if providers were tacitly colluding to elevate prices). Therefore, each competitor would have strong incentives to deviate from putative coordination – the profits from cheating on the cartel would simply be too great for the cartel to be sustained.

46. The substantial profits available from cheating are due in part to the fact that cheating would be easy to accomplish and difficult to detect – and therefore hard to punish. For example, facilities-based competitors could cheat on a collusive pricing or market division-type agreement by selling cheaply to a reseller, or by signing roaming agreements. Such behavior would be difficult to monitor and punish, which makes the possibility of coordinated behavior

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<sup>42</sup> See Horizontal Merger Guidelines § 2.1.



unlikely as a result of the proposed merger.

47. Another factor that makes coordinated interactions in the wireless industry more difficult is the uncertainty of future demand. In the wireless industry, in which there is rapid technological change and rollout of new services, there is likely to be uncertainty about future levels of demand. According to the Horizontal Merger Guidelines, coordination may be more difficult in a market with relatively frequent demand or cost fluctuations among firms.<sup>43</sup> Coordination may be more difficult in these types of markets because the market driven fluctuations may be difficult for firms to distinguish from cheating on a coordinated agreement. Thus, the fluctuations make it less likely that the coordinated interactions will occur in the first place. Similarly, uncertainty about future demand creates difficulties for a putative cartel to sustain its collusive state – it would find it problematic to distinguish between low demand due to deviations from the cartel arrangement and low demand due to lack of public interest in a new product or service relative to anticipated levels.

## **V. Conclusions**

48. The nature of competition in the wireless sector, in particular its dynamism and the significant degree of extant rivalry, makes it unlikely that a merger of AT&T and Dobson would result in higher prices and lower output through either coordinated behavior among the participants in the wireless sector or unilateral behavior by the merged firm. Based on our analysis of the available information, we conclude that the proposed merger will deliver

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<sup>43</sup> *Id.* § 2.12.

substantial consumer benefits while not engendering significant competitive harms in any relevant market. As such, the proposed combination is in the public interest.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on July 12, 2007.

  
Robert D. Willig

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on July 12, 2007.

  
Jonathan M. Orszag